

COMMENTS

The Human Rights Accountability of Ukraine's Communist Regime

*Myroslava Antonovych University
of Kyiv-Mohyla Academy*

Ukraine has yet to develop an effective mechanism for ending the impunity still enjoyed by the perpetrators of human rights violations under the Soviet regime. The Ukrainian Parliament and the President have not been as active or consistent as, for example, the Czech, Hungarian, Lithuanian, South African authorities, and Ukraine has not yet fully addressed the legacy of her people's sufferings under communism.

There have been some limited attempts at decommunization in Ukraine. After the military coup d'etat in the former Soviet Union failed on August 24, 1991, the Communist Party of Ukraine was accused of participating in that attempt. The Presidium of the Verkhovna Rada (Parliament) of Ukraine issued a Decree (Ukaz) on the Temporary Suspension of the Activity of the Communist Party of Ukraine (August 26, 1991). Financial assets and property of the Communist Party were frozen and taken over by the Verkhovna

Myroslava Antonovych

Rada of Ukraine pending a judicial investigation into the participation of Ukraine's Communist Party in the coup. A second decree concerned the property of the Communist Party of Ukraine and the Communist Party of the Soviet Union on the territory of Ukraine (August 26, 1991).

The question of how to render justice for crimes committed under the rule of the Communist Party of Ukraine has not been resolved, despite Ukraine's continuing need to deal with the legacy of the past. Some crimes committed by the Communist Party of Ukraine and of the Soviet Union were crimes against humanity, including attempted genocide.

For example, the great famine of 1932-33 was organized by the Communist Party of the Soviet Union, with the acquiescence of the Communist Party of Ukraine, with the intent of eradicating Ukrainians as a national group. As Robert Conquest has shown, the Soviet authorities at first denied the existence of the famine, with the help of Soviet diplomats and Western journalists sympathetic to the communist cause.¹ When the famine could no longer be hidden, some foreign governments and politicians took action, as when Hamilton Fish, Jr. submitted a resolution (on 28 May, 1934) to the United States Congress, registering the facts of the famine and "taking cognizance" of the violations that it represented of fundamental human rights. The resolution was referred to the Committee on

¹ Robert Conquest, *The Harvest of Sorrow* (N.Y.: Oxford Univ. Press) at 322-323.

Accountability

Foreign Affairs and ordered to be printed.²

Some members of the foreign diplomatic corps in Moscow expressed sympathy for the Ukrainian victims of Stalin's deliberate famine. For example, the British Embassy reported to London that conditions in the Kuban and in Ukraine were "appalling".³ Yet, in general public officials in the West kept silent, pretending not to notice. As George Orwell complained (of England), "Huge events like the Ukraine famine of 1933, involving the deaths of millions of people, have actually escaped the attention of the majority of English Russophiles".⁴ According to Robert Conquest, the scandal was not that foreigners justified the Soviet actions; but that they refused to hear about them and were not prepared to face the evidence."¹

It was not until 1988, that the ninety-ninth Congress of the United States of America created the Commission on the Ukraine Famine, headed by Dr. James E. Mace, to conduct a study of the 1932-33 famine. In its executive summary, the Commission formulated nineteen findings, one of which was that: "Joseph Stalin and those around him committed genocide against Ukrainians in 1932-33".⁶

There have been some attempts to organize a "Nuremberg"-style tribunal for the crimes of the

² House Resolution 39a, 73rd Congress, 2nd Session. See *Ibid*, at 310.

³ *Ibid*. Citing British Embassy dispatch 5 March 1933.

⁴ *Ibid*, at 321.

⁵ *Ibid*.

⁶ *International Commission of Inquiry into the 1932-33 Famine in Ukraine: Final Report* (1990)

Communist Party of the Soviet Union. Among the first steps for preparing for a trial was the creation of an International Commission of Inquiry into the 1932-33 Famine in Ukraine.⁷ The establishment of this Commission was due to the initiative of the World Congress of Free Ukrainians, members of which approached a number of jurists and legal scholars in different nations, asking them to participate in an inquiry into the famine that had taken place in Ukraine during 1932-1933. The Commission was formed on February 14, 1988, with seven commissioners: Prof. Colonel G.I.A.D. Draper, formerly British prosecutor at the Nuremberg Trials; Prof. John P. Humphrey, of Canada, formerly Director of the United Nations Division of Human Rights; Prof. G. Levasseur, of France, formerly a member of the Commission for the Revision of the French Penal Code; Prof. R. Levene, of Argentina, formerly president of the Court of Appeals; Prof. C.T. Oliver, USA, former Assistant Secretary of State and US Ambassador; Prof. J. Sundberg, of Sweden, appointed President of the Commission of Inquiry; and Prof. J. Verhoeven, of Belgium, appointed vice-president.

The Commission of Inquiry was established as an entirely independent, non-governmental, self-generated body. Under the Terms of Reference, adopted on February 14, 1988, the Commission was to inquire and report upon:

- (1) the existence and extent of the famine,
- (2) the cause or causes of the famine,
- (3) the effect it had on Ukraine and its people, and
- (4) the recommendations as to responsibility for

⁷ *Ibid.*

Accountability

the famine.⁸

As a result, five facts have been established to the satisfaction of the Commission:

(I) It is beyond doubt that Ukraine was severely affected by the famine in 1932-33 and that the Ukrainian and Soviet authorities were aware of the dire food shortages of the population.

(II) It is also indisputable that, although they were aware of the dramatic conditions in Ukraine, the Soviet authorities refrained from sending any relief until the summer of 1933.

(III) The Soviet authorities adopted various legal measures which amplified the disastrous effects of the famine by preventing the victims from finding any food at all or from leaving the region.

(IV) It is true that the Soviet authorities at the time denied the existence of any famine in Ukraine and that, against all evidence to the contrary, persisted in their denials for more than fifty years with the exception of Khrushchev's private avowal.⁹

Although the International Commission of Inquiry into the 1932-33 Famine in Ukraine was not a court, the Commission, by its Terms of Reference, formulated recommendations as to responsibility for the famine. During the debates, and particularly in the closing submission of the Counsel for Petitioner, W. Liber, an accusation of genocide was recorded.¹⁰

⁸ *Ibid*, at 1.

⁹ *Ibid*, at 45-48.

¹⁰ *Ibid*, at 51.

Myroslava Antonovych

The Commission confirmed the existence of a preconceived and carefully prepared plan to starve Ukraine, with the intent of destroying the Ukrainian people, by deliberately inflicting on the group conditions of life calculated to bring about its physical destruction. This constitutes the crime of genocide under international law, which states are now recognized to have an affirmative duty to punish and prevent.

In 1983, the government-in-exile of Sovereign Ukraine (1917-20) presented an Accusation Act against the Government of the U.S.S.R. regarding the Great Famine of 1932/33 to the International Court of Justice in Hague.¹¹ The Court did not accept the petition, on the grounds that Ukraine was no longer an independent state. Now that Ukraine has achieved its independence, the question needs to be addressed again.

Other crimes of the Communist Party of Ukraine and the Soviet Union include numerous systematic and mass-scale acts of torture during interrogations in the 1930's - 106()'s and hundreds of thousands deaths as a result of beatings in NKVD, and later in KGB, prisons. Between 1918 and 1919 more than 1,000 people were killed every month without trial. At the height of Stalin's terror, more than 40,000 people were killed per month, and many more disappeared after having been detained by the security organs.

While the Constitution of the Ukrainian SSR formally

¹¹ "Accusation Act Against the Government of the U.S.S.R. Re Great Famine of 1923/33 Presented to the International Court of Justice by Government of the Sovereign Ukraine" *Ukrainian Q* (1982).

Accountability

provided for all internationally recognized human rights, there was little tolerance for actions and practices incompatible with the Communist Party's ideology.¹² Consequently, human rights were not observed. For example, the Ukrainian Helsinki Group, organized in 1976 to promote the implementation of the Helsinki Accords in Ukraine contain 37 members, of whom 25 were imprisoned, 2 were exiled, 6 were banished, and 1 was incarcerated in a psychiatric institution.¹³

The Communist authorities also prohibited the religious activities of the Ukrainian Autocephalous Orthodox church. Whole parishes were repressed, bishops and priests were arrested and churches were destroyed. In 1930, as a result of a political initiative in the Ukrainian city of Kharkiv, 32 bishops and nearly 10,000 priests were killed. The Ukrainian Greek-Catholic Church was also suppressed. Greek-Catholic priests, nuns and bishops were either killed or incarcerated, and the pitiful remnant were finally forced in March 1996 to liquidated the Brest Church Union, in violation of canon law. Both the Ukrainian Autocephalous Orthodox and the Greek-Catholic Churches existed only in secret during the entire Soviet period and not legalized until after the collapse of the Soviet Union. During the period of 1917-39, 8,000 churches were destroyed by the Soviet authorities.

¹² M. Anotonovych, "Legal Aspects of Human Rights in Ukraine" (1990) 52 *Ukrainian Q.* 109 at 110.

¹³ L. Verba & Yasen, eds., *The Human Rights Movement in Ukraine: Documents of the Ukrainian Helsinki Group 1976-1980* (Baltimore, Washington, Toronto: Smolosky Publishers, 1980) at 10.

Myroslava Antonovych

The Communist authorities also violated human rights by suppressing the Ukrainian language. The Communist party imposed the study of Russian in the republics' schools (1938); required that thesis presentations take place only in Russian (1970); imposed higher learning and teaching in Russian (1978, 1983); and finally made Russian into the official language (1990).

The Communist government also tried to destroy the Ukrainian nation by forcibly transferring hundreds of thousands of Ukrainians to Siberia or to the Far East. The transfers took place pursuant to the June 1944 secret order No. 0078/42 of the People's Commissariat of Internal Affairs of the USSR and of the People's Commissariat of Defense of the USSR signed by Beria and Zhukov.¹⁴ Under this order, all Ukrainians who had lived under German occupation were to be deported. As stated by the first secretary of the CPSU Central Committee, Khrushchev, in his report about "cult of personality" at the 1956 CPSU congress, Stalin intended to deport the whole Ukrainian people, and was only constrained in doing so by their vast numbers, which made the job too difficult.¹⁵

The question remains why the crimes of the Communist Party of Ukraine have never been properly addressed and punished, or even formally recognized by the state. Simply to list some of the crimes the Communist Party of Ukraine committed, as I have done in this article, constitutes the strongest recognition and

¹⁴ *Supra* note 172 at 234-235.

¹⁵ A. Avtorkhanov, *The Empire of the Kremlin. The Soviet Type of Colonialism* (Germany: Prometheus-Verlag, 1988) at 80-81.

Accountability

remedy that the victims have yet received, despite the enormity of their suffering. The primary reasons that states and international institutions have been so silent about communist-era crimes is the manner in which the Soviet empire came to an end. For many years the power of the Soviet Union silenced states (particularly in Europe) that might otherwise have recognized Ukrainian suffering. After the dissolution of the Soviet Union, which left old elites largely in place, foreign governments sought to influence the new authorities, many of whom were complicit in the former regime's violations of fundamental human rights.

The Ukrainian successor government has never actually denied its responsibility to redress past violations of fundamental human rights. In 1991, the Verkhovna Rada adopted a Law on the Rehabilitation of Victims of Political Repressions in Ukraine. Imperfect as it may be, the very fact of its enactment is important. People now feel free to discuss the great famine of 1932-1933 and other crimes of the Communist era. Monuments to the victims of the terror famine have been erected, while the statues of the Lenin and other leaders of the Communist Party have been demolished and streets named after Communist Party leaders have been renamed.

Yet, the Ukrainian government has neither created a state commission to investigate human rights abuses of the past, nor punished the Communist Party or those of its officials who are responsible for crimes against humanity. The present government shows no inclination to create a Truth and Reconciliation Commission, as was done in South Africa.

The practice of most Central and East European states confirms the existence of a duty to investigate and to punish the gravest human rights violations of a prior regime. Central and East-European states have not usually instituted criminal proceedings against those complicit in the human rights violations of prior regimes. Instead, the most active of the post-communist transitional states have at most disqualified former party elites from certain public offices, through a process of "lustration", aimed at the most egregious violators of universal human rights.

The experience of Ukraine illustrates how important it will be to strengthen the recognition of an international duty to investigate and to publish, or at least to publicize, the gravest human rights abuses of prior regimes. Young democracies, striving to establish impartial systems of justice, should at least respond to the most egregious injustices of the past. When the transition has been partial, and incomplete, as in Ukraine, Truth Commissions will not be created without the strong support of the international community. By disregarding the need for the recognition (and if possible, the punishment) of past abuses, the international community makes their repetition more likely. In the meantime, scholars should at least identify and condemn former human rights violations, as I have done in this article, to stigmatize the perpetrators, and perhaps deter future violations through the strength of public opinion.